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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,128	01/03/2004	Clifford A. Wright	788116-1	1766
33651	7590	09/22/2004	EXAMINER	
JERRY RICHARD POTTS 3248 VIA RIBERA ESCONDIDO, CA 92029			PATEL, MITAL B	
		ART UNIT	PAPER NUMBER	
			3743	

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/751,128	WRIGHT, CLIFFORD	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mital B. Patel	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 03 January 2004.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 and 13-19 is/are rejected.
- 7) Claim(s) 4-12 and 20 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 03 January 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "62" has been used to designate both exit hole and flange. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the exit hole must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate

figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 3, 13, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Bartholomew (US 5,400,776).

5. **As to claim 1**, Bartholomew teaches a cannula system (**See Fig. 2**) comprising a pair of extension tubes **23**; a divided cannula **29** coupled between said pair of extension tubes; a pair of earpieces **61** for cooperating with said pair of extension tubes to support said divided cannula in a desired position relative to the nostrils of a patient; each individual one of said pair of earpieces including a

front eye hole **at 77** for guiding an individual one of said pair of extension tubes into a recessed channel (**See Fig. 6**) disposed on a top portion of the individual earpiece; and a rear eye hole **at 75** for helping to secure said individual one of said pair of extension tubes into a desired position within said recessed channel.

6. **As to claim 2**, Bartholomew teaches a cannula assembly (**See Fig. 2**), comprising: slider tube extension means **23** for helping to facilitate a distance adjustment; nasal cannula means **29** coupled between said slider tube extension means for facilitating both the delivery of and collection of gases; ramped ear piece means **61** coupled to said nasal cannula means by said slider tube extension means for facilitating supporting said nasal cannula means from the ears of a user; and said ramped ear piece means including open recessed channel means (**See Fig. 6**) disposed between bridge means **67,73** for helping to facilitate user adjustment of the distance between said nasal cannula means and said ear piece means.

7. **As to claim 3**, Bartholomew teaches a cannula assembly wherein said ear piece means further includes means defining a tube locking hole **at 69,75,79** for helping secure said nasal cannula means in a fixed position relative to said ear piece means.

8. **As to claim 13**, Bartholomew teaches a cannula system (**See Fig. 2**) comprising a pair of a cannula coupled to a pair of extension tubes **23**; a pair of earpieces **61** for supporting and retaining said extension tubes and said nasal cannula in a fixed position; and wherein each individual earpiece includes a pair

of guides 75,77 with a recessed channel (**See Fig. 6**) disposed therebetween for receiving and retaining an individual one of the extension tubes.

9. **As to claim 14**, Bartholomew teaches a cannula system wherein said nasal cannula is a divided nasal cannula 29 for facilitating the delivery of and collection of gases.

10. **As to claim 15**, Bartholomew teaches a cannula system wherein one of said pair of guides is an exit bridge 75 disposed adjacent to an exit hole at 75, said exit bridge having a hole extending therethrough for providing access to said exit hole to provide an extension tube exit path from said recessed channel to said exit hole.

#### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 16, 17, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartholomew (US 5,400,776).

14. **As to claims 16-19**, Bartholomew teaches essentially all of the limitations including an entrance bridge 77 except for wherein the recessed channel terminates at an inclined ramp disposed at about an oval shaped exit hole having its long axis extending along the longitudinal axis of said earpiece and said inclined ramp reaches its apex at the distal end of the long axis. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to modify Bartholomew to have an inclined ramp and have the exit hole be oval in shape because Applicant has not disclosed that the inclined ramp and oval shape provides an advantage, is used for a particular purpose, or solves a stated problem or provides unexpected results over any other shaped ramp or exit hole. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the teachings of Bartholomew because the extension tube will remain compressed in the guided recess channel of Bartholomew at a desired position. Therefore, it would have been an obvious matter of design choice to modify Bartholomew to obtain the invention as specified in claims 16-19.

***Allowable Subject Matter***

15. Claims 4-12 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
16. The following is a statement of reasons for the indication of allowable subject matter: As to claim 4, the prior art of record does not teach nor render obvious the overall claimed combination of a cannula assembly further including stop means for helping to limit an adjustment distance between said nasal cannula means and said ear piece means. As to claim 20, the prior art of record does not teach nor render obvious the overall claimed combination of cannula system wherein the nasal cannula has a single tube with at least one gas outlet and with at least gas inlet channel wherein each ear piece has a tube entrance hole with a sufficient diameter for receiving therethrough one of said pair of slider extension tubes but not a sufficient diameter for receiving therethrough said single tube.

***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6684883, US 6561193, US 5682881, US 6505624, US 5438979, US 5308337, US 5193534, US 5137017, US 5117818, US 5105807, US 5025805, US 4708446, US 4699139, US 4559941, US 4535767, US 4465067, and US 2168705.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 703-306-5444. The examiner can normally be reached on Monday-Friday (8:00 - 4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mital B. Patel  
Examiner  
Art Unit 3743

mbp

Henry Bennett  
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